S. HRG. 98-1269

INTERNATIONAL TERRORISM

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

Printed for the use of the Committee on Appropriations

SPECIAL HEARING

Department of State

U.S. GOVERNMENT PRINTING OFFICE

40-443 O WASHINGTON : 1985

-12/22

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CONTENTS

	Page
Department of State: Office for Counter-Terrorism and Emergency Planning	1
Prepared statement of Hon. Arlen Specter, U.S. Senator from Pennsylvania	2
Prepared statement of Robert Oakley, Director, Office for Counter-Terrorism and Emergency Planning	5
Prepared statement of Michael J. Matheson, Deputy Legal Adviser, Department of State	11
Press statement by Alan Romberg, Department of State	18

INTERNATIONAL TERRORISM

TUESDAY, NOVEMBER 27, 1984

U.S. SENATE,
SUBCOMMITTEE ON FOREIGN OPERATIONS,
COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:05 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Robert W. Kasten, Jr. (chairman) presiding.

Present: Senators Kasten and Specter.

DEPARTMENT OF STATE

OFFICE FOR COUNTER-TERRORISM AND EMERGENCY PLANNING

STATEMENT OF THE HONORABLE ROBERT OAKLEY, DIRECTOR, OFFICE FOR COUNTER-TERRORISM AND EMERGENCY PLANNING, DEPARTMENT OF STATE

ACCOMPANIED BY:

MICHAEL MATHESON, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE

DALE TAHTINEN, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL TRADE CONTROLS, DEPARTMENT OF STATE

OPENING STATEMENT OF SENATOR KASTEN

Senator KASTEN. The subcommittee will come to order. This morning's hearing will focus on the implementation of various provisions of U.S. law which require the administration to take certain actions with respect to foreign assistance and trade, if a particular country is found to be aiding terrorism or terrorists.

I would like to thank the Senator from Pennsylvania, Senator Specter, for suggesting this hearing. He has been working in this area and I think, frankly, that the entire Congress—both the House and the Senate—will be giving key attention to this particular area. Obviously it is an area that the Secretary of State is personally interested in, and all of us are concerned about.

Terrorism across the world is growing. Every day we read of one more event. Today, we wake up to another assassination in India of a British diplomat, and this is something to which all of us, I believe, need to address ourselves.

Our witnesses this morning will be: Ambassador Oakley, the Director of the Office for Counter-Terrorism and Emergency Planning; Michael Matheson, the Deputy Legal Adviser; and Dale Tahtinen, the Deputy Assistant Secretary for International Trade Controls.

Due to the importance of this hearing, the subcommittee requested the presence of Michael Armacost, the Under Secretary for Political Affairs, who is ultimately responsible for final recommendations to the Secretary of State on this subject. Unfortunately, he's either unwilling or unable to be here, which is unfortunate.

This committee has the responsibility of funding the security assistance and the economic assistance across the world. The fact that the Under Secretary of State has decided that he is unable or unwilling to be with us, I think demonstrates a lack of concern on the part of the State Department, and is of great concern to this committee.

We need the policy people before us in order to make the proper decisions in terms of receiving funds, and only if we have the requisite information can we make these decisions. I appreciate the expertise of the witnesses who will be testifying today, but I do not believe that these gentlemen have the responsibility over policy, which is key.

I simply want to suggest to the Department of State, and to those of you who are here, that this is not a way that we can do business. We need to have the policy people as well as the people who are interested in the day-to-day efforts if we are to proceed.

This hearing was not canceled because I think the subject matter is so important, that this is a beginning, not an end. We are going to continue to work with the Department of State, and if need be, we will become more definite and more specific in the efforts that we are making.

In the next couple of months, the subcommittee will begin its regular fiscal year 1986 budget hearings. We would like this process to begin with a good working relationship with the Department of State. Clearly, this is not a good working relationship. There is no cooperation from the Department of State, and it is regrettable. It is not a good beginning; nevertheless the importance of this subject is such that I believe we must proceed.

So I am happy to have you here today under what are difficult circumstances. I am sure that the information you will provide to the subcommittee is important and will be worthwhile. We are going to have to revisit this area, I believe, time and time again as we work together to try to deal with the problems of terrorism around the world.

Senator Specter, do you have an opening statement of any kind at this time?

PREPARED STATEMENT OF SENATOR SPECTER

Senator SPECTER. Yes. Thank you, Mr. Chairman. I have a prepared statement which I would ask be made a part of the record.

Senator KASTEN. Without objection, so ordered.

[The prepared statement follows:]

PREPARED STATEMENT OF HON. ARLEN SPECTER, U.S. SENATOR FROM PENNSYLVANIA

Today terrorism poses a grave challenge to this nation, its allies, and the world community. It is, and must be treated as, a form of modern warfare.

As in times of war, we must use every legitimate weapon at our disposal. The sophisticated technology, financial capital, and trade resources possessed by the United States and its allies are powerful weapons against nations that support or

practice international terrorism. Yet these weapons go unused as, for example, our allies continue billions of dollars worth of trade with nations such as Libya, Syria, and Iran. American oil interests continue to produce and market one-half of Libya's crude oil output, estimated at 1.1 million barrels per day. France continues arms sales to Libya despite the continued presence of Libyan forces in Chad. In short, we and our allies are allowing the economies of terrorist nations to function smoothly even as those countries undermine our interests and target our diplomats, servicemen, and friends for terrorist attack.

This hearing focuses on the need to use our economic power to deter or penalize nations that commit or support acts of international terrorism. Current statutes include provisions requiring the regulation, restriction and/or termination of foreign assistance and trade with nations supporting international terrorism. We must carefully examine these provisions to determine whether stricter enforcement or additional legislation is necessary. Clearly, if our efforts are ineffective or exhibit a lack of commitment, we will win the support neither of our own public nor of allied peoples and governments.

As Secretary Shultz recently echoed in his speech on terrorism, the magnitude of the threat posed by terrorism today is so great that we cannot afford to confront it with half-hearted measures. Today's examination of current anti-terrorism provisions should help focus attention on the urgent need for a forceful unilateral and multilateral campaign against the supporters and practitioners of international terrorism.

IMPORTANCE OF THE PROBLEM OF TERRORISM

Senator SPECTER. I would like to supplement it with a few additional comments. I join in your observations on the importance of this matter and the necessity that we need the attention of the top level of the State Department. And Senator Kasten, I commend you for scheduling this hearing at this early date.

Senator Kasten and I and others have been working on this issue because we want to start early on it before we reach the crisis stage where the Subcommittee on Foreign Operations considers appropriations, and in the Appropriations Committee, the way it works on Capitol Hill, with all of the dither and flurry, to try to figure out why it is that the committee wants to curtail certain funding and the administration says it is indispensable. And to do it in November, well in advance, is an orderly system.

But the problem of terrorism is enormous and there is no greater threat which faces the world today, in my judgment, than terrorism, because it has replaced war as a means of achieving international policies. And there are a whole series of events which occur and there is a climate around the world.

I visited the NATO Assembly meeting last week in Brussels and was in France and Ireland, and there is a different branch of terrorism which permeates all of those areas. Within the past year we had the murder of the British policewoman, which was an act emanating from the Libyan Embassy, and it was just outrageous in my judgment that those murderers were able to walk out of England scot-free.

METHODS OF DEALING WITH TERRORISM

We have had terrorists who have blown up U.S. Embassies in Lebanon, and we are wrestling with the way of dealing with this kind of a problem. The Secretary of State made a very important public pronouncement on the subject as to how we are to cope with it, and there is a real problem about summary administrative judg-

ments on the part of U.S. officials to have retaliatory raids, that some nations may be able to do.

I do not quarrel with Israel's use of that type of retaliation. Israel faces a different situation where its survival is at stake every day and they have to move in a summary fashion.

My own judgment is the United States cannot do that. Given our power, we cannot make administrative or executive decisions and then execute on them and have retaliatory raids. We have to follow the due process of law, and we have to have trials. And, there is precedent for action by an aggrieved nation, like the United States, where our courts have upheld the use of very forceful means to take criminal defendants into custody.

SUPREME COURT CASE ON U.S. TRIAL OF FUGITIVE

It is worth a moment's reflection on the case of the Supreme Court of the United States in 1886, where Illinois pursued a fugitive to Peru. He was abducted, actually kidnaped, and brought back to Illinois, and tried and convicted. And the case went to the Supreme Court of the United States, which said that that procedure was appropriate where you have a criminal, to act on the case in that manner. That case was upheld by Justice Hugo Black, a noted civil libertarian, as an appropriate way of gaining jurisdiction for the trial and prosecution of criminals.

My own judgment is that we ought to treat terrorists as international criminals by analogy to the old law of piracy, where a pirate could be tried wherever he was found. Ordinarily, criminal jurisdiction turns on authority to prosecute only where an offense is committed, and that is the generalized rule.

But piracy was an exception. You tried a pirate wherever you found him. My sense is that terrorism ought to be treated the same way.

HEARINGS ON MODIFICATION OF VIENNA CONVENTION

We have had hearings in the Judiciary Committee. Senator Denton and I have had a series of hearings on issues to modify the Vienna Convention to change the criminal laws of the United States. And I have introduced legislation to work on a variety of extradition procedures or to gain jurisdiction over people by abduction if necessary.

It may sound harsh, but it is a more pallatable remedy and not quite as extreme as a retaliatory raid, because then you try and you have evidence and you make a determination in the courts with the due process of law.

FOREIGN AID AS HAMMER AGAINST TERRORISM

Those are all very difficult matters, to try to deal with terrorism through the judicial process or to try to deal with terrorism on retaliation. But we have a line where we have great authority on the Subcommittee on Foreign Operations, as we extend credit or we give foreign aid. And there are also provisions in a variety of licensing ways where licenses may be granted to Libya, which may

be curtailed to have an effective way of dealing with Libyan terrorism.

And there is a real issue about our foreign aid to Greece, in my judgment, about giving substantial foreign aid to Greece at a time when Greece is not cooperative in terms of holding terrorists, turning terrorists back to the nations which have criminal charges pending against them.

And there is a problem with France. We cannot get an extradition treaty with France. There is a case that I learned about just last week in discussing this problem with French officials and the U.S. Embassy in Paris, about a case arising out of Los Angeles where a terrorist had his fingerprints inside of a bomb, so there was no question about the conclusive or strong evidence about it. He ended up in Paris and French officials refused to cooperate in bringing him back to the United States on a group of technicalities.

Well, I think that there are a range of options short of retaliation, which is what the Secretary of State suggested—I have grave doubts about that—or short of abduction, like the Eichmann case, which may be upheld in courts of law, which we have to explore through our power of the purse.

And I would suggest to you gentlemen, as you are here today, taking heed of what the chairman has said about other ranking officials, that our subcommittee may well be on the verge of some very tough responses on foreign aid to see to it that we are not subsidizing countries which lend aid and comfort to terrorists. I think that is the least we can do.

And so I commend Senator Kasten, the chairman, for convening these hearings and underscore what he has said to you about our seriousness in pursuit of this matter.

Thank you, Mr. Chairman.

INTRODUCTION OF DEPARTMENTAL WITNESSES

Senator KASTEN. The first witness this morning will be Ambassador Robert Oakley, who is Director of the Office for Counter-Terrorism and Emergency Planning. Ambassador Oakley.

STATEMENT OF ROBERT OAKLEY

Ambassador OAKLEY. Thank you, Mr. Chairman.

First let me say that Mr. Armacost is sorry he cannot be here today. I know that you all talked on the telephone, but I would like to make very clear that it is not lack of interest by the State Department, and there certainly is no lack of policy-level interest in what your subcommittee is doing and in the whole question of terrorism.

SECURITY AND TERRORISM PROBLEMS

Indeed, as you probably have read in the newspapers, the Secretary of State has a meeting every morning he is in the country—and when he is not, it is the Acting Secretary—with Mr. Armacost and Mr. Spiers, the Under Secretary for Management, to whom I report directly, the Deputy Secretary, Mr. Dam, and other relevant

members of the State Department, to discuss security and terrorism problems.

So the Secretary of State, not just one or more of the Under Secretaries, all of whom are involved in one way or another in the administration of the various laws that we are going to discuss today, all give this a great deal of policy attention. And even though I am the one who is sitting before you today, you can be sure that they will get a full reading on the views that you and Senator Specter have expressed and a very accurate reading.

We appreciate the opporunity not only to testify today, but to work with you, Senator Specter and the members of your staff, in developing some very constructive proposals. Quite frankly, things last year were done in a bit of a rush and there was not enough time for prior consultation. We think that this year we can, as you have suggested, do a lot better job and we intend to do so.

As you and Senator Specter have also said, terrorism covers a very, very broad spectrum all the way from laws to military or paramilitary action to international treaties and conventions and to the collection, analysis and dissemination of intelligence, which is very important. I find it very humbling, because I do not think that I have detailed knowledge on all of the areas that I am supposed to be watching over, but fortunately there is very good cooperation and coordination within the State Department and other agencies of the U.S. Government. So we are collectively, I think, able to fulfill our responsibilities.

And certainly in the last 2 months, the amount of time and efforts and attention at all levels, including the very top, paid to the issue of terrorism has improved considerably.

EXISTING LEGISLATION

Terrorism has been a subject on which the Congress has sought to legislate in many different contexts, and variety of legislative authorities have grown out of those efforts. Several different pieces of existing legislation provide the United States with useful legal bases of taking action against terrorists or governments that support them.

However, the legislative authority containing antiterrorism provisions were passed at different times and originated by different House and Senate committees of Congress. Moreover, most were designed for broader programs, not primarily related to terrorism and the means to counter it. The administrative arrangements that have grown up within the executive branch, including the State Department, to carry out each of these laws were, therefore, designed in accordance with those primary purposes, rather than being focused directly upon terrorism.

Specific language on sanctions against governments that support international terrorism is found in several different provisions of law, as you all know. Chief among these laws are the Export Administration Act, the Arms Export Control Act, the Foreign Assistance Act, and the Trade Act of 1974. Various sections of other laws, including foreign assistance appropriation acts, are also applicable to this problem.

The holding of these hearings has stimulated the State Department to accelerate work it already is doing to review systematically and pull together legislation dealing with terrorism, in order to better implement it and also to pinpoint any gaps which might require further legislative action.

I think it would be very helpful to our discussion to have experts comment on different applicable laws. So we have this morning Mr. Michael Matheson, Deputy Legal Adviser in the State Department with particular responsibilities in this area. We also have Mr. Dale Tahtinen, the Deputy Assistant Secretary for International Trade Controls, who is primarily responsible for that area.

Terrorism by definition involves more than one country. When we talk about international terrorism, there is no single definition that is commonly accepted in international law and practice. But as someone said, when you see it you recognize it.

Effective laws are one, but only one, of the many tools we must have as a government to combat terrorism. A realistic appreciation of what our own limitations are, we think, is essential to these hearings and to further discussions on what additional legislative measures can and should be taken.

EXPORT CONTROLS

I would like to start first with an examination of the transfer of weapons, explosives and weapons-related technology. Iran and Libya head the list of governments designated under the Export Administration Act that are providing direct active support and assistance for terrorist organizations.

No exports of items on the U.S. munitions controls list are permitted to these countries or to other countries that we have listed for this purpose, such as South Yemen, Syria, and Cuba. Further, as a matter of policy we do not currently permit the export of items on the munitions control list to Afghanistan, Ethiopia, Iraq, and Nicaragua.

We have had considerable success in using these controls to prohibit the flow of U.S. weapons, explosives, and related equipment to these countries. We have had limited success, but some success, in urging other governments to impose similar prohibitions in certain cases, such as Iran. However, alternative sources of governmental and private supply outside the United States have enabled these governments, particularly Libya and Iran, to acquire what they need both to wage conventional warfare against their neighbors, such as Chad and Iraq, respectively, and to supply terrorist hit teams assigned to attack their own citizens abroad and officials and institutions of governments with whom they disagree, such as the United States, United Kingdom, and France, Jordan, Saudi Arabia, Egypt, Sudan, Somalia, and Zaire.

So despite the tight controls that we have managed to apply, these countries have managed to obtain what they need to support terrorist actions, in some cases all too effectively.

In a broader context, a general embargo is in effect against North Korea, Vietnam, Kampuchea, and Cuba, denying export or reexport of virtually all U.S.-origin commodities and technical

data. For other Communist bloc countries, export license applications are not approved.

Thus, national security controls under the Export Administration Act effectively eliminate any significant contribution originating in the United States to any effort these countries might undertake to support international terrorism.

TRANSFER OF WEAPONS AND TECHNOLOGY

We are using several different legislative authorities, including some that are not specifically aimed at terrorism, in order to block the transfer of weapons or weapons-related technology, explosives, and things of this sort from the United States to governments which support or might support terrorism. This is a matter of policy as well as a matter of law, and one about which the administration feels very strongly.

Nevertheless, we cannot prevent other governments from producing or importing weapons and then making these weapons available to international terrorism. Some governments do it directly, almost blatantly. Several governments around the world, particularly but not only Eastern Europe, are actively engaged in the transfer of modern light weapons to terrorist groups and to governments, such as Iran and Libya, who actively support terrorism. We know that the Red Brigade, various Palestinian and Armenian terrorists, and even the Provisional IRA have obtained weapons by this means.

Then there are the small-scale transfers of weapons and equipment to governments supporting terrorism and even directly to terrorist groups. It is very difficult to stop, even in the United States where our law enforcement agencies do their best. Despite these efforts, arms occasionally get sent directly or indirectly to terrorist groups such as the IRA or others, as well as to certain governments who are supporting terrorism.

EFFECT OF ECONOMIC SANCTIONS

Now, even more than our efforts to block the supply of weapons, the application of economic sanctions by the United States against countries that engage in or support international terrorism has had only limited effect. The diversity of sources of supply that characterizes most widely traded goods in the late 20th century means that if one country or a group of countries decides to withdraw from the market as a sanctions measure, other suppliers move in to fill the gap.

The importing country thus gets what it wants and any intended pressure on that country to change its behavior is correspondingly reduced. We have seen this kind of result with respect to both Libya and Iran, because individual suppliers do not control enough of the market for a given item to make sanctions effective, because many items that are readily available in ordinary commercial markets have dual utility in peaceful, military or terrorist applications, or because agreement among supplier countries cannot be reached on whether sanctions would have any beneficial effect.

Where our policy interests are coincident with those of our allies and we can undertake a coordinated multilateral program, we can

have significant success; for example, in the case of trade in high technology for military applications with the Soviet bloc countries, although even there some things slip through.

In the wake of the June 1984 economic summit meeting, we see better prospects in the future for cooperative efforts with other European governments to limit the flow of weapons that might be used by terrorists. Unfortunately, however, there is no similar indication that our allies would be willing to control exports of things of less than direct military relevance.

We have had to face, in short, the severe limits imposed upon our ability to apply effective sanctions by the diversity of suppliers and the multiplicity of markets that exist for most goods that move in today's world trade. Given the increase in the number and danger of international terrorist incidents over the past year and the constant changes as the terrorists shift their geographic focus, their targets, and their technology, it is incumbent upon the United States and other threatened governments to protect themselves by all available means, short term and long term, unilateral and multilateral, neglecting none.

INTERNATIONAL COOPERATION IN COMBATING TERRORISM

This administration has taken the problem of terrorism very seriously from the beginning, has seen it as a long-term challenge, and has sought to develop an across-the-board policy response that will defend U.S. personnel, facilities, and interests from terrorist attacks, and has sought to achieve much greater international cooperation in combating terrorism.

This involves better physical protection for our personnel and installations abroad, better intelligence in order to understand, locate, and detect the specific threats from terrorist groups, greater preparedness and techniques to counter terrorists actively, and a clearer political consensus in favor of preempting terrorist attacks or hitting back in certain circumstances should we be unable to prevent them.

The administration is working in all these areas, working hard, and progress is being made, although not enough and not rapidly enough. We intend to do still more.

LEGISLATION ADOPTED

Developing an effective body of laws to support national efforts to combat terrorism has been a high priority part of our overall effort. In the last year, the administration sent four pieces of proposed new legislation, as well as a supplemental appropriation request for $110 million and a supplementing authorization request for $366 million, to the Congress.

Two of these bills were to implement international agreements, the Montreal Convention Against Aircraft Sabotage and the United Nations Convention Against Hostage Taking. The third bill would provide authority to pay rewards in international terrorism cases; and a fourth bill would prohibit training or support for international terrorist entities.

In the last few days before adjournment, as you know, thanks to very rapid, effective work particularly by the Judiciary Committees

in the Senate and the House, the first three of these bills were passed and signed into law. The fourth was not adopted. The appropriation and authorization requests were approved in full, thanks in good part to the support we had from the Foreign Operations Subcommittee which is responsible, as you point out, for the appropriations in this area.

The administration particularly appreciated the legislative efforts in the last session of Congress on two important counts. We obviously were very pleased to get legislation implementing the Montreal and the United Nations Conventions, because we feel both our legal and moral authority to work with other governments has been strengthened.

The ability and money to pay rewards can be very helpful in resolving future incidents, helping to save lives and reduce suffering. The additional funds voted for security have already enabled the State Department to substantially improve short-term security at a score of highly vulnerable posts and make progress toward longer term, more costly improvements such as moving out of buildings in highly dangerous locations which are too close to main streets to be properly protected against bomb attacks.

We are also expanding our antiterrorist training program for civilian security forces of friendly governments, a new program authorized by earlier legislation a year ago, one that is just getting into high gear.

BIPARTISAN EFFORT

Of equal, if not greater, importance than the actual adoption of the various pieces of legislation and appropriation of funds, however, is the truly bipartisan energy that went into getting these laws through the Congress and the appropriations and the authorization. We saw good evidence of that in the work of both the Senate and House Judiciary Committees, in the House Foreign Affairs Committee, in the Senate Foreign Relations Committee and in the Appropriations Committees. We hope this continues since the war to be waged against terrorism is a long one.

EXAMINATION OF LEGAL BASE

That kind of a bipartisan view has also brought home to us the need to examine more systematically our legal base. In parallel with the legislation that was submitted earlier this year, the administration began a comprehensive review of possible areas for change in legislative authority. Moreover, in the course of the Economic Summit Seven meetings in London last June, it was agreed that all members would examine their laws and compare the results to see where gaps might exist that could be exploited by terrorists.

We have formed a working group within the State Department and we are collaborating with other agencies, such as the Department of Justice. We intend to be working with congressional staff to identify areas that call for legislative effort in the coming session. We think such a group will be helpful not only to suggest future legislation, but also in providing all of us with a clearer picture of the opportunities and the limitations of the existing author-

ity. For example, we found some very useful things in the comprehensive crime bill that was passed at the very last part of the Congress which helped in the antiterrorist field.

COMPREHENSIVE LEGISLATIVE APPROACH

Among the things that we hope to do in the coming session is to renew this effort to find an effective and realistic means to control training or support by U.S. firms and individuals that directly contribute to terrorist attacks. The State Department is also examining the usefulness of new internal measures which might improve the coordinated application of existing legislation.

As we look at the situation this morning, Mr. Chairman, the disparate state of laws dealing in one way or another with terrorism is a graphic reminder of the plain fact that our awareness of the seriousness, durability, and threat posed by this problem has grown slowly. Neither our appreciation of the seriousness nor our understanding of what might be effective remedies at any one time has been conducive to the comprehensive legislative approach which is ideal.

Because terrorism impinges on so many different areas and activities of our society as well as our Government, and because terrorism responds to no single treatment, the problem is a difficult one to treat in a comprehensive way. Nevertheless, the efforts that you are making will certainly contribute to a better, more consistent application of existing laws and to identify and hopefully adopt legislation to deal with areas which still need further attention.

I can assure you, you will have the complete cooperation of the State Department in making that appraisal and in deciding how to proceed therefrom.

Thank you very much.

[The prepared statement of Mr. Matheson follows:]

PREPARED STATEMENT OF MICHAEL J. MATHESON, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before your subcommittee today to address the vitally important topic of U.S. Government policy on international terrorism, and specifically the administration of those provisions of U.S. law that relate to security assistance to and trade with governments that support international terrorism. My testimony today will survey the most important of these provisions.

SECURITY ASSISTANCE

Section 620A of the Foreign Assistance Act of 1961, as amended, requires the President to terminate for a period of one year all assistance under the Act to any government which aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism, except where the President finds national security to require otherwise. Additional acts by the government in question of such aiding or abetting by granting sanctuary during the initial period of ineligibility are to result in extensions of that period. If the President finds that national security justifies a continuation of assistance to such a government, he must report that finding to the Speaker of the House of Representatives and the Senate Foreign Relations Committee. A similar provision has been added to the annual foreign assistance appropriations acts since 1978; its most recent version appears as section 521 of the Foreign Assistance and Related Programs Appropriations Act for fiscal year 1985, which formed part of the Continuing Resolution signed into law last month. Section 3(f)(1) of the Arms Export Control Act requires the President to terminate all sales, credits, and guaranties under that Act under conditions identical to those set forth in section 620A of the Foreign As-

sistance Act; this applies to government-to-government transactions under the Foreign Military Sales Program. The functions conferred on the President by these sections have not been delegated.

Our records do not reveal any invocation of these sections to date. Governments that aid and abet international terrorism are unlikely to be among those to which the Administration would want in any event to provide security assistance, and the executive branch has ample statutory authority to suspend or terminate security assistance or sales in any instance in which it is judged that such assistance or sales would aid international terrorism or otherwise compromise U.S. national security interests.

EXPORT CONTROLS

Private exports of goods and technology from the United States are primarily governed by the Export Administration Act of 1979, in the case of non-military exports, and the Arms Export Control Act, in the case of exports of defense articles and services. The Export Administration Act, which has, of course, expired, but whose authorities have been continued in force and effect by virtue of a declaration by the President under the International Emergency Economic Powers Act, contains several explicit references to international terrorism. Section 3(8) states that "[i]t is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism," and directs the President to "make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before resorting to the imposition of export controls." Section (6)(b)(2) cites the effort to counter international terrorism as a foreign policy objective of the United States. And section 6(i), the so-called "Fenwick amendment", requires the Secretary of Commerce and the Secretary of State to notify the House Foreign Affairs Committee and the Senate Banking, Housing, and Urban Affairs and Foreign Relations Committees at least 30 days before any license is approved for the export of goods or technology valued at more than $7,000,000 to any country where the Secretary of State has determined that such country has repeatedly provided support for acts of international terrorism, and that such exports would make a significant contribution to its military potential, including its military logistics capability, or would enhance its ability to support acts of international terrorism. The Congress chose this provision, which originated in the House, over a provision originating in the Senate that would have prohibited the approval of a license for the export of goods or technology to a country concerning which the Secretary of State had made the same determinations.

The Secretary of State has designated several foreign governments under section 6(i) as having "repeatedly provided support for acts of international terrorism". Such designations are kept continuously under review, and foreign governments have been added to or deleted from this list as our assessment of their behavior in this regard has warranted. At present the foreign governments designated under section 6(i) are those of Libya, Cuba, Iran, Syria and the People's Democratic Republic of Yemen (South Yemen).

Section 38 of the Arms Export Control Act provides authority for the imposition of export controls on defense articles and services "in furtherance of world peace and the security and foreign policy of the United States." This authority has been delegated to the Secretary of State, and is administered by the Bureau of Politico-Military Affairs. Although this section does not mention international terrorism explicitly, in practice, licenses to export defense articles and services to countries that have been identified as supporters of international terrorism are not issued.

TRADE

Pursuant to section 501 of the Trade Act of 1974, as amended, designation of a country as a beneficiary developing country permits the President to provide duty-free treatment for any eligible article from that country. Section 502(b)(7) of the Act prohibits the President from designating any country as a beneficiary developing country "if such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism," unless the President determines that such designation will be in the national economic interest of the United States and reports the determination to the Congress with his reasons therefor. The President's authority under section 502(b)(7) has not been delegated. We are aware of no instance in which the President has employed

the waiver provision of section 502 to designate a country as a beneficiary developing country despite an assessment under that section that the government of that country aids and abets international terrorism.

Mr. Chairman, this has not been an exhaustive survey of all provisions of U.S. law that contemplate sanctions against foreign governments that support international terrorism. For example, there are several such provisions in the laws respecting United States participation in international financial institutions that I have not touched upon in my statement. We can discuss these other provisions during the question period, if desired. I have instead attempted to address the main provisions in this area in our foreign assistance, export control, and trade laws. As my discussion has indicated, these provisions occur in a wide variety of contexts, and standards for imposing sanctions under the various laws accordingly differ. Those in the executive branch responsibile for execution of these laws take that responsibility seriously, and strive to implement the intent of Congress in this regard. This is not to say that our implementation of these laws is perfect and requires no improvement. Indeed, we welcome a constructive dialogue with Congress that can reveal shortcomings both in the implementation of existing laws and in the available legal authorities themselves, and we view today's hearing in that context.

Thank you.

EXAMINATION OF TRADE WITH LIBYA

Senator SPECTER [presiding.] Thank you very much, Ambassador Oakley.

Let me explore with you at the outset questions on three nations at various levels of the spectrum with whom we deal: Libya, Greece, and France. Starting with Libya, I am advised that the United States exported $191 million worth of goods and technology to Libya in 1983, and our trade levels are running slightly higher in 1984.

Our European allies, as presented on information to me, had trade in excess of some $4 billion. We have some 1,000 Americans who continue to work in Libya and there are 30,000 Europeans who continue to work and live in Libya.

When the issue arose about some retaliatory action against Libya after the British policewoman was killed, the immediate response arose that if any action were taken by Great Britain or retaliatory action by the United States, that there would be at risk our 1,000 citizens and at risk some 30,000 Europeans.

It seems to me to be an intolerable situation to do business with a country which engages in state-sponsored terrorism, as the evidence suggests as to Libya. Now, my first question is, do we have laws on the books which could restrict the $191 million worth of goods and technology which we exported to Libya in 1983? Not saying we should, but do we have laws on the books now which will enable us to stop that?

Ambassador OAKLEY. Mr. Chairman, I believe that the laws on the books would provide authority to ban trade with Libya completely, as we have done with certain other countries.

Senator SPECTER. Which nations have we banned trade with completely?

Ambassador OAKLEY. Cuba, Vietnam, North Korea, and Kampuchea, I think.

Senator SPECTER. So that we could ban trade with Libya if we choose to do so?

Ambassador OAKLEY. Yes.

Senator SPECTER. The followup question is an obvious one. Why do we not?

Ambassador OAKLEY. As you well know, there are conflicting views on what effective policy is, and there are conflicting interests as to what approach we should follow in cases like this, both within the Congress and within the executive branch, as part of the democratic process.

SUPPORT FOR BANNING TRADE WITH LIBYA

Senator SPECTER. I agree, Ambassador Oakley, and now the time has come for discussion on it. And this may be—I do not know that anybody has seriously considered banning trade with Libya, but I will give you one Senator's instinct, and it is a yes.

I am not prepared to say that with finality because I want to hear your views, and I want to know the views of others in the administration or the Commerce Department. But I would state it as a proposition that ought to be examined. What are the reasons not to ban trade with Libya? It seems to me the presumption is in favor of doing that, given Libya's international character.

Ambassador OAKLEY. Well, Senator, I can tell you that there has been a great deal of consideration given to this subject, that we have progressively tightened up our controls over trade with Libya. As you point out, last year it was almost $200 million, but in previous years it has been over $800 million annually. We have sacrificed several hundred million dollars in trade with Libya in order to make our point about the policy of the United States toward terrorism generally and our feelings about the Libyan administration in particular.

As you point out, and as I mentioned in my testimony, the Western Europeans have no such inhibitions, and they have rushed in to take the contracts which the United States has not been willing to approve even for purposes of competition so as to allow American business to bid upon them.

TRADE PRACTICES OF UNITED KINGDOM

Senator SPECTER. Ambassador Oakley, has our State Department said to Great Britain, "we urge you to stop trade with Libya as an economic sanction for the murder of the British policewoman, and if you do it we will?"

Ambassador OAKLEY. We have talked to a number of foreign governments about tightening sanctions against Libya.

Senator SPECTER. Have we asked Great Britain to stop trading with Libya?

Ambassador OAKLEY. I would prefer not to get into that sort of discussion in an open session. But it is our view, based upon the discussions we have had, as well as what we have seen in terms of the practice of the Western European governments, that there is no prospect at the present time of their taking action of this sort.

Senator SPECTER. Well, I think that is very germane, and I accept your statement about not discussing it in an open session. We can pursue that.

And when we consider U.S. trade and our interest in maintaining and not having a more unfavorable balance of trade, I understand the considerations for trade. But we are talking about a form of warfare, and it seems to me the same kind of considerations

which lead us to ban any trade to Cuba or Vietnam would be equally applicable to Libya.

TRADE PRACTICES OF U.S. ALLIES

Do our western allies trade with any of the nations with whom we do not trade?

Ambassador OAKLEY. Almost all of them.

Senator SPECTER. That is what I thought. So we do not determine our policies on North Korea or Cuba or the others——

Ambassador OAKLEY. I understand, Senator. And as you well know, the legislation, though, both the Trade Act and the Export Administration Act take into account not only things such as terrorism and national security interests, but also national economic interests and the fact of whether or not the controls will achieve the intended results, the likely effect of controls on U.S. export performance, and the ability of the United States to enforce the controls.

And as you also well know, while the Secretary of State certainly shares your view about being very tough on terrorism, there are other parts of the administration that represent different interests, just as there are other Senators who have different views from yours.

Senator SPECTER. Maybe we ought to put it to the test. Maybe there ought to be a sense of the Senate resolution on stopping trade with Libya, and let's see how the vote comes out.

Ambassador OAKLEY. That would be interesting.

EXTRADITION CASE—GREECE

Senator SPECTER. All right. That is something that this Senator will consider.

Let us turn now to a consideration of Greece. We have extensive debates every year on aid to Greece, aid to Turkey, Cyprus, that entire issue. And the United States has been very favorably disposed to Greece, and Greece is a very important ally of the United States, and there are great bonds between the United States and the national Greek community and the nation of Greece.

But I for one am very much concerned about the issue of Greece not cooperating in returning known terrorists for prosecution, and the case which comes to mind most readily is the Shara case. And I would be interested to know, what are the official facts on Shara to the extent you can enlighten me and put it on the record?

Ambassador OAKLEY. I will have to submit that to you if you do not mind, Senator. I do not have it in my head.

Senator SPECTER. All right.

[The information follows:]

GREEK GOVERNMENT ACTION IN TERRORIST CASE

Essentially, a Jordanian, Fuad Hussein Shara, was arrested and held by the Greek police in mid-April for his attempt to place an explosive device on an internation passenger airliner. The U.S. provided the Greek government with firm evidence of this terrorist activity. We made clear our serious concerns about this case to the Greek government and believed we would be consulted prior to any decision on his case. Nevertheless, in May the Greek government without consulting us released Shara and permitted him to leave Greece. Separately, official Greek representatives

have stated that the evidence was insufficient and consequently Shara had to be released. We believed there were no grounds for this release and strongly protested the action both here and in Athens. Additionally, we have regularly made clear to the Greek Government the USG position that all civilized countries must cooperate to eliminate terrorism. Specifically we have pressed the Greeks for progress in solving the terrorist attacks against two U.S. military personnel in Athens.

Does Mr. Matheson or Mr. Tahtinen know those facts?

BILATERAL AND MULTILATERAL TALKS ON EXTRADITION

Ambassador OAKLEY. In general, let me say that we share your concerns over the question of extradition. I had a discussion with the legal office and the other representatives of the Summit Seven in the middle of September, and we are continuing to talk on a bilateral basis as well as multilaterally about this.

I was in London 10 days ago talking with the British. They are concerned about our inability to extradite some people who they believe are conclusively proven supporters and active terrorists related to the IRA. The Israelis expressed concern that our extradition treaty—and they're negotiating a new one with us—is too broad and needs to be narrowed, particularly in the area of political offenses.

It is an area that needs a lot of attention, and I think it is something that we should work together on, because there are real problems in almost every country in the world. And the French, as you know, are perhaps the ones who take the most pride in saying that "we have traditionally been a territory of exile and we welcome anyone." In an exceptional measure, they extradited three Basque terrorists, but in general they do not—you mentioned France in the beginning.

SHARA CASE

Senator SPECTER. I am about to come to France. But before we do, Ambassador Oakley, I want to pursue the Shara case. I thought you might have some authoritative facts on it.

But let me provide to you the facts or the allegations which have been brought to my attention through the media. Earlier this year, according to the information provided to me, in June of this year, Greece freed a terrorist named Shara. There was heavy criticism from President Reagan's administration for freeing a Jordanian suspected of being involved in seven planned terrorist attacks.

Now, according to the information I have, there was solid evidence presented to Greece about this man's complicity in terrorism, and Greece responded by refusing to turn him over to the United States. Now, assuming that to be true—and I would want to explore those facts to be sure that they are true before coming to any judgments, but we are not going to have a chance to talk about this too often because of our respective schedules—the issue is, what should our policy be to Greece? Should we provide $500 million a year in foreign aid to Greece, given Greece's attitude about a terrorist like Mr. Shara? Now, I appreciate that this is one case and that there are very vital interests that the United States has with Greece and NATO, and there are very vital ties and very important ties which the United States has to Greece and, I restate, the ties to the national Greek community.

Whenever the foreign aid issue comes up, all of us on the Foreign Operations Subcommittee and on the Appropriations Committee have many contacts from our Greek constituents, who are very important to us.

Having said all of that, why should we give foreign aid to Greece in the face of Greece's handling of a case like Shara, assuming these facts to be true?

Ambassador OAKLEY. That is an excellent question, and within the executive branch we go through the same sort of discussions that you all do on Foreign Operations and Appropriations. And the balance so far has come out for continuing the assistance. It is something that needs to be looked at.

Senator SPECTER. We have had an extensive statement that appeared in the New York Times last week about Prime Minister Papandreou's attitude toward the United States. They do not want to be a satellite of the United States, they want to maintain ties with other parts of the world. And we can understand all of that.

I do not think our economic aid ought to be absolutely conditioned on any specific set of policies. There are a great number of flexible issues. But criminal law and terrorism is something different, and it might be an expensive case to cost $500 million. But I, speaking for myself, would give serious consideration to making it a $500 million case, because it is an example. It is an example to the rest of the world about how seriously we consider terrorism.

VIEW ON FOREIGN AID TO GREECE

Now let us talk about the French for a minute. I would like you to pursue that, Ambassador Oakley, as to what is—I would like to have a response from the State Department about the considerations as to the pros and cons from the State Department's point of view on foreign aid to Greece in the face of a case like Shara, if the facts are as they have been reported in the media.

[The information follows:]

U.S. SECURITY ASSISTANCE TO GREECE

Greece is an important ally of the United States. Our relationship has endured because it is based on common values, despite the fact that at times we have significant differences. The Shara case is one of these differences and the United States has made its position on Shara in particular and terrorism in general very clear to the Government of Greece.

Security assistance is an integral part of the U.S.-Greek relationship and brings significant benefits to the U.S. as well as Greece. It contributes to U.S. policy interests by helping to ensure continued use of four major U.S. military facilities and a number of smaller installations in Greece. Moreover, as a member of the NATO Alliance, Greece has important responsibilities for the defense of the southern flank of Europe. U.S. security assistance helps provide the equipment and support necessary to enable Greece to fulfill these responsibilities, contributes to achieving NATO force goals and provides an incentive for Greece to continue procurement of U.S. equipment.

CONTINUING TRADE AND CONTINUING RESIDENCE OF AMERICANS IN LIBYA

Senator SPECTER. I would similarly like to have a statement as to Libya on the issues which we have discussed: continuing trade and continuing having our citizens there.

[The information follows:]

U.S. CITIZENS REMAINING IN LIBYA

This question is currently under legal review by the Departments of State, Commerce, and Justice. Restrictions on the use of U.S. passports for travel to Libya have been in effect since December 1981. The invalidation of U.S. passports has been extended each year since 1981 because of the continued danger to Americans in Libya resulting from the hostility of the Libyan government toward the United States. A decision by the Secretary of State to extend these travel restrictions for an additional year was announced on November 30, 1984. Our policy calling for the voluntary departure of Americans from Libya, which was announced in December 1981, remains in effect. This policy was reiterated by the Department of State on December 13, 1984 (see Press Spokesman's statement which follows), again calling for the withdrawal of American citizens from Libya. While most Americans have honored this appeal, we believe that perhaps 1000 to 1500 Americans continue to reside in or travel to Libya annually. Our current review of legal options is intended to establish whether economic or other legislation exists which might be employed to compel the withdrawal of these remaining Americans. The constitutionality of such restrictions on Americans' right to travel must also be considered.

TRAVEL TO LIBYA

On December 10, 1981, U.S. passports ceased to be valid for travel to, in or through Libya, and may not be used for that purpose unless a special validation has been obtained. The categories of individuals eligible for consideration for a validation are set forth in 22 CFR 51.73. Presently, the only four categories of persons being considered are as follows:

(1) *Professional Reporter:* Includes full-time members of the reporting or writing staff of a newspaper, magazine or broadcasting network, whose purpose of travel is to gather information for dissemination to the public. The request must include evidence of professional reporter status, as well as a letter from the applicant's employer attesting to his or her status.

(2) *Humanitarian Cases:* This category includes those applicants wishing to travel to Libya for the purpose of family reunification or to visit a critically ill immediate relative. The request must include the name and address of the relative, and a telegram or medical certificate from the relative's physician in Libya attesting to the nature and gravity of the illness.

(3) *American Red Cross:* Applicant establishes that he or she is a representative of the American Red Cross or international Red Cross traveling pursuant to an officially sponsored Red Cross mission.

(4) *National Interest:* The applicant's request is otherwise found to be in the national interest.

Persons contemplating travel to Libya should also be aware that there is no U.S. mission in Libya, and that our interests there are being protected and represented by the Government of Belgium. This protecting power can provide only limited emergency services, and the normal protection of U.S. diplomatic and consular representatives cannot be provided to Americans traveling to Libya.

DEPARTMENT OF STATE, PRESS SPOKESMAN'S STATEMENT, DECEMBER 13, 1984

Mr. ALAN ROMBERG. In December 1982, President Reagan expressed his concern for the safety of Americans in Libya and called for their voluntary departure. Consequently, use of American passports was proscribed for travel, in or through Libya unless specially validated by the Department of State. Such validation is granted only in extraordinary circumstances.

These travel restrictions remain in effect under renewal announced on November 30, 1984.

In response to the President's December 1981 request, thousands of Americans voluntarily departed from Libya. The individuals and companies affected by the President's request were very cooperative, and the number of Americans there dropped significantly. Only a few hundred remained, a large number of whom were spouses of Libyans.

Unfortunately, the number of Americans in Libya has again risen, apparently in part as a result of business opportunities and a willingness of the Libyan authorities to cooperate in allowing U.S. citizens to subvert the intent of U.S. policy by entering Libya without using their passports.

Colonel Qadhafi's readiness to use terrorism in support of his policies and to sponsor the use of terrorism by others has been tragically demonstrated in repeated incidents in recent months. Furthermore, Libyan hostility toward the United States has not diminished.

There is a potential danger to Americans who reside in, visit, or transit Libya. There is no direct American diplomatic representation in Libya. Belgium is the protecting power of the United States interests in Libya and can only provide minimum consular services or assistance to Americans. Therefore, the United States Government cannot assist Americans who may be endangered by hostile actions of the Libyan Government.

Against this background, all Americans should honor existing travel restrictions which were initiated to help insure their safety. In addition, we again call upon American firms to honor the President's request and to withdraw any American citizen employees who might remain in Libya.

FORCING RETURN OF AMERICAN CITIZENS FROM LIBYA BY U.S. GOVERNMENT

Senator SPECTER. By the way, Mr. Oakley, is there any provision of law which would authorize our Government to compel the return of U.S. citizens from Libya? Or if we tell them of the problems, then is it really up to them as to whether they want to stay there or not, given the risks involved?

Ambassador OAKLEY. We have prohibited the use of American passports for travel to Libya, and we have warned all American citizens that there are dangers, and that the United States can provide no protection. As you point out, a number of them, somewhere over a thousand, have chosen to go anyway.

Consideration is being given to what more we can do along these lines, because we do not believe that it is in the interest of the United States to be held hostage by Qadhafi due to the presence of American citizens in Libya.

Senator SPECTER. So in effect we have put our citizens on notice that if they stay there, they stay there at their own risk?

Ambassador OAKLEY. Indeed we have. Those who go in, go in not using their passports. Because of the complicity of the Libyan Government, it has agreed to allow them to come in for business purposes without stamping their passports with a visa.

Although we are responsible, we feel responsible for all Americans, I think the degree of responsibility we feel for those in Libya is somewhat less because they have been forewarned, and they know they are there in contravention of U.S. policy.

EXTRADITION CASE—FRANCE

Senator SPECTER. Well, I think that we have a heavy responsibility for our citizens who are abroad. But in a context where there is reason to know that the United States might have to take action against Libya which might lead to retaliation against U.S. nationals in Libya, I think that is a fair statement of our policy and a fair statement of the risk involved.

And we cannot protect everyone from everything, but we do have a duty to do our utmost and to put them on notice. And I am interested to hear what you say on that subject.

Let me move to the subject of France, which falls on the continuum with nations with whom we have much closer relations, and pick up the case involving the Armenian, the alleged Armenian

terrorist who is supposed to have manufactured a bomb, subject to prosecution in a California court, his fingerprints alleged to have been found on the inner workings of the bomb to establish a positive identification. He fled to France, and he was not extradited, under some technical construction of the extradition treaty.

I have had some experience in extradition treaties, having been a former prosecuting attorney, and have had substantial experience in the interpretation of statutes, and you can interpret statutes in a wide variety of ways. There was ample latitude, in my legal opinion, for the French, to have extradited that individual.

And the question is, What ought our attitude be toward France? What can we do to signify in some meaningful way, perhaps even exploring the area of sanctions with the French on a case of this sort?

Ambassador OAKLEY. As you know from talking to the people at the Embassy, it is an issue that we take seriously and an issue we have had a number of high-level discussions on with the French Government, as late as 10 days ago when I went to Paris as well as London.

We are not the Government that is the most strongly offensed, if you will, or the one that feels the most angry about the French. If you talk to some others, particularly the Italians or the Turks or others who have large numbers of known terrorists living peacefully in France, you will find that they not only share our views, they hold them much more strongly than we do, and for good cause.

But the French maintain very strongly their traditions of allowing anyone to come there for exile, including those guilty of what they call political offenses. And as you say, your experience makes you able to understand this much better than I, including the latitude that can be given by individual judges.

But also, in a country like France, where the administration is fairly tightly centralized, the governments themselves do such things as interpreting "political offenses," and it has been an area where there has been a lot of discussion.

The Council of Europe has passed some resolutions on extradition that would narrow this interpretation. The French have not agreed to that. So there is a serious problem there.

CONSIDERATION OF INTERNATIONAL CONFERENCE

Senator SPECTER. Ambassador Oakley, might it be useful to convene an international group, a conference on the subject of international terrorism? Might we get support from Italy and other nations which are unhappy with what France is doing, to focus some international attention on this subject and try to arrive at some international definitions?

We live, as of yesterday, in a world where there may be some international power over sovereign states, given the decision of the International Court of Justice on Nicaragua. We do not yet know what is going to happen on that subject, but we may be on the threshold of some form of compulsory international judicial proceedings.

Ambassador OAKLEY. I am sure you have a better view of that sort of thing than I do. It was my impression that the world was

sort of going in the other direction; rather than placing more importance, giving more authority to international organizations, it was somewhat going the other way around.

Senator SEPCTER. It is going the other way, and it is still going the other way. It could go both ways or three ways or many ways.

Ambassador OAKLEY. I think you are right. But I would like to defer to my legal colleague over here. I think the idea of an international conference to focus on the question of terrorism and extradition is a very interesting one. I am not quite sure who would convene it or who would attend.

PROPOSED STATUTE FOR VIENNA CONVENTION

Senator SPECTER. Let me focus a little more sharply in terms of the statute which Senator Denton and I proposed in the bill for reconsideration of the Vienna Convention. Might that be—on diplomatic immunity, where we have had hearings and the State Department has opposed that on the issue of retaliation.

But I would be interested in your views, Mr. Matheson, as to your sense for the desirability of an international convention and how it might be approached.

Mr. MATHESON. I believe, Senator, that my colleague Dan McGovern had an opportunity to testify before the Judiciary Committee at some length on that question. And as I recall, he expressed a certain caution that we all feel about reopening the Vienna Convention in some international forum, in the sense that the outcome of such a debate and consideration might be to relax or in other ways to harm the current protections of the Vienna Convention.

Senator SPECTER. I do not seek to reraise that at this time. I merely mentioned that as a possible procedural avenue, and would ask—strike the Vienna Convention, or withdraw consideration, do not strike it, but withdraw consideration of it.

How might we approach the issue of an international convention on terrorism?

Mr. MATHESON. I think that particular example illustrates that one has to make a calculation, before convening or getting into an international negotiation on any subject, as to the likelihood of coming out with results that are better than the current situation, which is not in any way to say that we should exclude the possibility of such a conference.

Senator SPECTER. It would be pretty hard to have it worse, though, would it not?

Mr. MATHESON. I am afraid it is possible.

Senator SPECTER. Really?

Mr. MATHESON. Because we have protections for our diplomats now, which could conceivably be weakened.

Senator SPECTER. Well, suppose we structure a convention for international terrorism and we do not raise the issue of diplomatic immunity. Of course, it is possible that any subject could come up.

All right, so you think it could be worse if diplomatic immunity were affected?

Mr. MATHESON. At any rate, I am not trying to exclude that. In fact, it may very well be that international discussions in some

form on the subjects of terrorism or extradition might have positive results. It is just that we do have to take a hard-headed analysis in each case to see what we would expect.

Senator SPECTER. So what would your thought be? That Secretary Shultz might take the lead through our channels and invite the countries of the world, both East and West, to a meeting on international terrorism? And the Soviet bloc nations would doubtless not respond, or perhaps they would respond.

Mr. MATHESON. I think one would have to approach this in stages and carefully, to start with consultations with our friends to see what is possible and what might be fruitful. I would not want to commit to any particular approach.

Senator SPECTER. So we would start more conservatively, talking to our friends.

Mr. MATHESON. Which we have been doing.

PROPOSAL FOR INTERNATIONAL CONFERENCE

Senator SPECTER. Have we approached our friends on any broader base than just bilateral discussions? Has there been any suggestion of an international conference?

Ambassador OAKLEY. Well, let me say that if one were to be very specific as to the purposes of some sort of multilateral conference or inter-nation conference, as Mike said, I think the chance of success would be greater both in getting people to come and in getting the favorable outcome of the conference.

We find that on sensitive issues involving terrorism, governments are less inclined to deal multilaterally and prefer to deal bilaterally, particularly where you have police or intelligence work or something of this sort involved.

On the question of laws, that is a different matter. I have to say that when we met with the representatives of the six other governments from the London Economic Summit—Canada, Japan, Italy, Germany, Britain, and France—in the middle of September, with their legal advisers and the people from their ministries of justice as well as the people from their foreign office and their ministries of interior, their views were the same as ours on not reopening the Vienna Convention at the moment. And I recognize that you for the moment have put that off to the side.

They felt that a much tighter, stricter interpretation was called for, and all of them were interested in the precedents and the legal view which we, our Government, shared with them. And they felt that they not only could, but they would move toward tightening up their own interpretations, including the British, who recognized, I think, after the fact that they were lax in the business of the Embassy, the Libyan Embassy there. And there is a move on to do that.

There has also been a lot of consultation amongst the European Community of Ten, as well as those of the Economic Summit, on some of these areas. And slowly, slowly, some things are beginning to evolve. But there is a lot of international and national sensitivity here.

I think if one prepared it properly, we might be able to do something, if we could focus it fairly sharply and do the groundwork ahead of time.

Senator SPECTER. Well, I would encourage you to do that, and perhaps that is a subject we can talk about outside of a public hearing room as well. But that would be a good forum to start, with nations which have a similar interest to focus attention. Never mind, at least at the outset, the question of diplomatic immunity. You have cases like the Shara case and you have the case like the Armenian in the French courts on extradition.

Ambassador OAKLEY. As I say, we are not the only ones. The Italians, the British, the Turks, and others share this feeling, as well as the Israelis, about tightening up on this sort of political offense exception to extradition.

Senator SPECTER. Well, I would suggest to you that—

Ambassador OAKELY. There are parliamentary conferences and things of that sort that also help.

PUBLIC REACTION TO TERRORISM

Senator SPECTER. I would suggest that the time is ripe on this subject. When you deal with law enforcement, you deal with something that the public is very much concerned about.

And I might take just a moment to tell you about an experience that I had on a burglar named Sidney Brooks in 1966, who fled from Philadelphia to Rhodesia. And I got a wire from the chief of police of Salisbury: We have got Sidney Brooks; come get him. And I wanted to send some people to get him and I got a call from the State Department: Do not go; you will violate Federal law. You cannot practice foreign policy. The United States has no relations with Rhodesia, because of Ian Smith, et cetera.

It was a different world. It was almost 20 years ago. And I said: OK, I will not do it, but I am going to tell the people of Philadelphia why I am not doing it. And the man on the desk said: Wait a minute, do not do that until I call you back.

And then he called back, and we worked out a structure where I sent a detective and an assistant district attorney to Rhodesia and the Rhodesian police put Sidney Brooks on a nonstop plane to Johannesberg, South Africa, and when he got off, there were extradition papers for him, and he ended up in a Philadelphia jail because the U.S State Department did not want—everybody was balancing out everything and they did not want to incur the wrath of Pennsylvania over ways to pacify Great Britain in their relationships with Rhodesia at the moment.

And I have a sense that there is a real clamoring out there of people of the world about terrorism. I traveled with the NATO group. We went to Dublin and Belfast, and all you feel in Ireland is the threat of terrorism. And then we went to Brussels and everybody is protected in Brussels. And then we went to Paris and I went to a symposium on the problem of Syrian Jews, and there is a lot of protection around.

You are looking over your shoulder every place you go. It is hard to go anywhere in this world without being concerned about terrorism. So I think there is a lot of sentiment for a really get-tough

policy, and never mind $191 million in trade, and never mind a lot more than that, just do not do business with the Libyans.

QUESTION OF WITHHOLDING FOREIGN AID

The Greeks do not want to extradite a man like Shara? $500 million is at risk. We tried it out, the Foreign Operations Subcommittee tried it out on $20 million with the trial of the nuns, and we finally got that case tried in El Salvador. We said 30 percent of their foreign aid is cut off unless and until there is a verdict, and finally the case was tried. We have good reason to think that it was tried because of that kind of pressure. Dollars talk.

POSSIBLE SANCTIONS AGAINST COUNTRIES SUPPORTING TERRORISM

Let me raise a question on a couple of other nations, and we have to adjourn here in just a few minutes. But what is it possible to do under our existing laws with relations, or trade, say, to South Yemen? Are we trading with South Yemen? Are we sending South Yemen anything that we could stop if we had a policy decision to stop doing so?

Ambassador OAKLEY. Mr. Chairman, I can dig out the details here, but with respect to countries such as Libya, because they have a lot of money, they are doing a certain amount of business with the United States, but in items that are strictly for peaceful uses, such as oil refineries or water pipelines.

The same thing would be true with South Yemen. We look very, very carefully at countries such as South Yemen or Syria, to say nothing of Libya and Iran, for anything that might have terrorist applicability.

Senator SPECTER. What I would like to ask you to do——

Ambassador OAKLEY. Or military applicability or anything of that sort.

Senator SPECTER. What I would request you to do, Ambassador Oakley, because we do have to adjourn in a few moments, is to pick out the nations—Syria, South Yemen, Iran, the others—where we have reason to believe that terrorist activities may emanate from or may be supported.

And I would like, the subcommittee would like, to know a couple of things. One is, what is our level of trade with those nations; and second, how many U.S. citizens are there; and then, what laws are applicable to stop the trade? I know we are not giving foreign aid to that category of nation.

Ambassador OAKLEY. No aid and really not much trade.

Senator SPECTER. But I think we should focus on the policy considerations as to what to do with nations like that.

Then, our research has disclosed that the laws that are available to deal with the problem with the issue of foreign trade are the Export Administration Act, section 6(i)—and I will give you a list of these to see if we have missed some or if there are other tools available to act against trade. Or perhaps a better way of formulating it, when you give me the answers to the questions which I have asked you, specify what existing laws are available.

Mr. Matheson, we have not turned to you, and I do want to turn to you.

Mr. MATHESON. Senator, I have submitted a statement to the subcommittee, which you may simply want to include in the record, that does refer to the major provisions. There are other provisions, and we can, if you would like, submit additional material for the record to outline the rest.

SURVEY OF LEGAL PROVISIONS DEALING WITH TERRORISM

Senator SPECTER. I have not had an opportunity yet to review your testimony, and I shall do that. But to the extent that your testimony does not cover all of the available statutory remedies, please supplement it. And if you think that there are any which the Congress ought to enact, then we would be interested in your views on that subject.

Mr. Matheson, we have not given you a chance to speak very much. We would be very pleased to get the essence of your view of the situation as we have been discussing it here this morning.

Mr. MATHESON. Well, Senator, I have a statement which basically, as I say, reviews the major provisions of U.S. law in the areas of security assistance and export controls and trade, which I will not go through in detail. What it shows in my mind is that we have very extensive authorities in the statutes to deal with all of these aspects of our relations with foreign countries for foreign policy or national security reasons, certainly including terrorism.

So my initial answer to you is that, in terms of government-to-government relations, we have a very full panoply of statutory authorities. I think the area in which we have been coming to the Congress in recent times for additional legislative authority has been in the area of controlling and dealing with private conduct. And in that area, of course, Congress has recently adopted statutory provisions, and we have suggested others.

But at any rate, yes, I will provide for the record a comprehensive survey of all the provisions in the law now which deal with this issue.

ABDUCTION TO ACQUIRE JURISDICTION

Senator SPECTER. Mr. Matheson, what do you think of the approach that has been upheld, as I said in my opening statement, by the Supreme Court of the United States, where Illinois pursued a man charged with fraud to Lima, Peru, and abducted him, kidnapped him, brought him back to the Untied States, tried him, and the Supreme Court upheld that? As I said, Justice Hugo Black later wrote an opinion approving of that kind of procedure.

What would you say about—the hard part is in finding the terrorist and gaining control over them. But what do you think about that sort of tactic, and then bringing him into court? He could be tried in a U.S. court. We could establish laws which would have sufficient nexus to have U.S. jurisdiction.

What do you think about that as an alternative way, as opposed to the retaliatory strike which Secretary of State Schultz has suggested?

Mr. MATHESON. Well, I think the department now responded to your proposals on this score. And I believe in our reply we expressed concern about the possible international implications, both

political and legal, of seeming to elevate abduction as a primary means of acquiring jurisdiction over individuals to be tried in the United States.

Senator SPECTER. How about a secondary means?

Mr. MATHESON. I think it would pose the same kinds of problems, and it would be regarded by the country in which the abduction takes place as a serious invasion of its sovereignty. And therefore it is, I think, by far less preferable to having a regular, legally sanctioned means through extradition and other agreements of obtaining jurisdiction over such individuals, and that is our objective. And we hope that the matter can be adequately dealt with in that fashion.

Senator SPECTER. Well, I quite agree with you that that would be preferable, to have an extradition treaty. For purposes of oversimplification, you could approach it in one of four ways: You could have an extradition treaty when you identify the culprit; you could have abduction, which as I say has been upheld in our courts; you could have summary execution against the individual; or four, you could have a retaliatory raid which might go against the individual and be more widespread and injure or kill other people.

Mr. MATHESON. Senator, I think the question of the use of force is in a different context. It is a context in which the United States feels it necessary, hypothetically, to take action in self-defense to protect itself against attack or imminent threat of attack. And in those circumstances you have a much different balance of political and legal considerations.

But simply as a means of acquiring jurisdiction over an individual for prosecution, I believe it is far preferable to have a regularized, legally accepted structure which other countries would not take offense at.

SELF-DEFENSE AGAINST FURTHER ATTACKS

Senator SPECTER. Mr. Matheson, you talk about self-defense. Are you talking about action in advance of force against us? What Secretary of State Schultz referred to in his speech was retaliation after the fact, a là the attack on the Embassy.

Mr. MATHESON. Well, there may very well be circumstances in which action after an attack is justified in self-defense to protect against further attack from the same source. But again, this is dealing with a different kind of threat. This is dealing with the imminent use of force against the United States.

That problem can be dealt with by use of force in self-defense. But the goal of having a reliable means for acquiring jurisdiction over individuals for purposes of prosecution hopefully should be accomplished in a regularized, legally acceptable way. We are concerned also, of course, by the possibility that if we were to engage in abductions that there might be retaliation against U.S. citizens by the same countries.

So you have a lot more difficult problems in that kind of approach.

SELF-DEFENSE PRINCIPLES

Senator SPECTER. Well, if you're dealing with the question of self-defense, if you deal by legal principles accepted in the United States that the retaliation could not be a part of that, at least in my legal opinion. If you take a simple case of two men in a controversy, each with weapons, one man may kill the other to avoid his being killed. But if that dispute ends or if a man is killed and his brother or son goes out and kills the other person, it is murder in the first degree.

The act of self-defense has to be directly related in U.S. law to the threat of death or serious bodily injury on the part of the person killing in self-defense.

Mr. MATHESON. Well, without getting into too direct an analogy with U.S. criminal laws, which is a different area, the armed individual might leave the scene but still be in the vicinity and still be exhibiting every intention of killing you when you emerge.

If you put that into an international context, it may very well give you grounds, if the threat is imminent and real enough, to continue to take action. There are, after all, no international policemen.

Senator SPECTER. Well, it is a matter for judgment and a complex issue. It would seem to me that abduction as upheld by the U.S. Supreme Court is a much lesser use of force than the kind of military action or paramilitary action which would be suggested by the other line.

EXTRATERRITORIAL REACH

One final question. What would you think about a definition of terrorism as an international crime, like the old crime of piracy, where as a matter of international law it would be recognized that you could try terrorists, a terrorist, wherever he was found, like you can try a pirate wherever he or she is found?

Mr. MATHESON. We are approaching that problem in terms of reaching international agreements which do require prosecution or extradition for various types of terrorist offenses; that is a valid approach and it is one we have been pursuing.

Senator SPECTER. Well, but that is to extradite and bring back the defendant, alleged culprit, to the jurisdiction where the act was committed, as opposed to a definition of an international crime where the alleged offender could be tried wherever he was found.

Mr. MATHESON. Well, of course we have ourselves enacted U.S. laws which give extraterritorial reach in certain kinds of situations. Whether that idea would be acceptable to other countries in the case of all terrorist actions on a universal basis, I don't know. We would have to look at that.

Senator SPECTER. Well, I would suggest that it is a question that ought to be explored. There is quite a precedent.

Well, gentleman, thank you very much.

PREVENTION OF EXPORTING SIGNIFICANT ITEMS

Mr. Tahtinen, we have not given you a chance to comment. Anything you would like to add to the discussion?

Mr. TAHTINEN. Senator, just very briefly, I would just like to underscore the point that the U.S. Government has undertaken a very aggressive effort to get the maximum cooperation we can from the allied countries and from any countries where we have any type of influence to prevent the exports of significant items that would assist any of the countries where we control our exports for antiterrorism purposes.

QUESTIONS TO BE PURSUED

Senator SPECTER. Well, I think this hearing has been very useful. I have learned a great deal from it, and we have left a number of questions on the table to be pursued. And I know that the State Department is actively pursuing with the French Government the extradition treaty issue, and that is very important.

But on the subject of Libya, we have the questions pending, and I would suggest to you that we may find a sense of Congress resolution about cutting off all trade with Libya, and it is a subject where we ought to give very serious consideration to the pros and cons. What are our interests in continuing to do business with Libya, given Libya's demonstrated record in the international field? So I will be looking forward to what you have to say there. And the Foreign Operations Subcommittee I think will touch a number of the laws which relate to sanctions as to Libya.

[The information follows:]

CONTINUATION OF TRADE WITH LIBYA

Export controls on Libya are the tightest we maintain on any destination, with the exception of the total embargoes in place for Cuba, Vietnam, Kampuchea and North Korea. Our Libyan controls are tighter than our controls on the Soviet Union. We deny export licenses for equipment and technology controlled for national security purposes, oil and gas related equipment and technology not readily available outside the U.S., aircraft and related parts and components, nuclear related equipment and technology, and several other categories of items. We believe these controls enable us to prevent a U.S. contribution to Libya's ability to pursue policies contrary to the U.S. national interest.

Our Libyan export controls are unilateral; other nations supply most of the items we deny. We have had some success gaining allied support for our policies in the nuclear and munitions areas. Beyond this, we see no indication our allies are willing to join us in economic sanctions against Libya. Their position is based on a belief that economic sanctions are not effective in exerting pressure to influence the behavior of other governments, and that isolating Qadhafi drives him deeper into the arms of the Soviets. Although we see little likelihood that other governments will join us in sanctions, we take every appropriate opportunity to reiterate our position to our allies and other friendly governments. In particular, we will maintain close consultations with our allies to design other measures aimed at combatting terrorism.

Regardless of the actions of others, we believe it is important that the U.S. maintain tight controls on exports to terrorism supporting states which support terrorism such as Libya. At a minimum, these sanctions show we are willing to pay a price to demonstrate strong opposition to the policies of those nations.

Nonetheless, the use of unilateral foreign policy export controls involves difficult trade-offs between our political concerns and commercial interests which are material to our balance of payments. No major corporation is dependent on exports to Libya for its survival. Even so, the effect of our export controls (which entail third country obligations on re-exports) are financially significant. We estimate that present controls cost American exporters several hundred million dollars a year in foregone sales to Libya and thousands of U.S. jobs lost as a result.

We have continued to allow exports of certain non-strategic, non-military items to Libya. This reflects numerous, complex factors including the Congressionally-mandated Section 6(b) of the Export Administration Act of 1979. In imposing or expand-

ing export controls we must also consider (1) the prospects that such controls will achieve the intended foreign policy purpose in light of other factors, including the foreign availability of similar goods; (2) the reaction of other governments to the imposition or expansion of U.S. exports controls; and (3) the likely effects of proposed controls on the export performance of the U.S., on the international reputation of the U.S. as a reliable supplier, and on individual companies and their employees.

Our export policy toward Libya is not static; they are under continuing review, and additional U.S. restrictions could be imposed should events so dictate.

AID TO GREECE

Senator SPECTER. And then the issue of aid to Greece is a very important one, because we know that will be back before us, and let us consider it with plenty of time to think through the implications of the Shara case and really know what the facts are, so that we do not have some issue as to the cutoff of aid or a reduction of aid or some sort of an approach as to Greece, where we realize the very serious political implications and national security issues, and do it far in advance of when those decisions have to be made.

Because I think these issues are going to be very much on the minds of the Subcommittee on Foreign Operations as we take a look at the budget next year. And that is why Senator Kasten and I want to move ahead now at an early stage to take up these complex issues and to try to understand all of the ramifications before we act in the subcommittee.

CONCLUSION OF HEARING

Thank you very much.

[Whereupon, at 11:15 a.m., Tuesday, November 27, the hearing was concluded and the subcommittee was recessed, to reconvene at the call of the Chair.]

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